to representing or allowing to be represented the 'value' of the land in question for the purposes of the subsection. Such tender for stamping was to pay the ad valorem stamp duty for the consideration paid and there was the process of adjudication under the Stamp Duties Act if the consideration stated was considered to be inadequate. In the end, we came to the conclusion that in these appeals we were not satisfied on a balance of probabilities that by stating the consideration in the relevant conveyances or other instruments of transfer, which were significantly lower than the 30 November 1973 market values as agreed by the respondents, the appellants had stated or had with their knowledge or consent allowed to be stated the 'value' of their lands within the meaning of s 33(5)(d).

For the reasons stated above, we allowed both the appeals and made the orders we did.

Order accordingly.

Solicitors: *Wee Ramayah & Partners*; *Cooma Lau & Loh & M Karthigesu*; *PK Wong & Co*; *Joseph Hoo Morris & Kumar*.

Reported by *Wong Kim Fatt*

Lim Cheng Wai v Public Prosecutor

HIGH COURT (SINGAPORE) – MAGISTRATE'S APPEAL NO 139 OF 1987
WEE CHONG JIN CJ
1 SEPTEMBER 1988

Criminal Procedure – Sentencing – Whether fine of $300 and order of disqualification for permitting another person to use motor vehicle without insurance cover is manifestly excessive – Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 88, 1970 Ed), s 3(2)

Road Traffic – Motor insurance – Whether there is insurance policy in relation to use of motor vehicle – Interpretation of policy provisions

Insurance – Motor insurance – Whether there is insurance policy in relation to use of motor vehicle – Interpretation of policy provisions

The appellant was charged with an offence under s 3(1) of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 88, 1970 Ed) and was convicted. Section 3(1) states that 'it shall not be lawful for any person ... to ... permit any other person to use a motor vehicle unless there is in force in relation to the use of the motor vehicle by ... that other person ... such a policy of insurance ... in respect of third-party risks as complies with the requirements of this Act'. The appellant had permitted B to use a school bus to ferry adult passengers. At that time, he did not possess an Adult Workers Contract Permit and was therefore not licensed to carry adult passengers under r 41 of the Traffic (Public Service Vehicles) Rules 1976. The sole issue in this appeal is whether there was a policy of insurance in force in relation to the use of the bus at the material time.

Held, dismissing the appeal:

(1) On a consideration of the material provisions of the insurance policy, namely, the 'limitations as to use' clause and memo B, the policy does not cover the use of the vehicle at the time of the offence. The magistrate was right in convicting the accused.

(2) The sentence imposed, ie a fine of $300, is not manifestly excessive. As regards the order of disqualification, there are no special reasons on the facts of the case not to impose an order that the appellant be disqualified from holding or obtaining a driving licence in respect of class 4 vehicles for a period of 12 months.

[*Obiter*: The court made some observations on the submissions advanced by counsel for the appellant. The appellant contended that the failure to obtain the Adult Workers Contract Permit amounted only to a breach of the policy which rendered it voidable at the option of the insurers. The court held that the argument overlooked a fundamental distinction which must be drawn in all such cases falling under s 3(1). First, the trial judge must determine whether, as a matter of construction, the policy covers the use of the vehicle at the material time. Secondly, if upon its true construction, the policy covers the use of the vehicle in question, the policy may yet be voidable at the option of the insurers, eg on the ground of misrepresentation. However, such a policy will remain a policy in force unless the policy had in fact been avoided in accordance with s 9(4) of the Motor Vehicles (Third-Party Risks and Compensation) Act.]

Cases referred to
1 *PP* v *Albert See* [1971] 1 MLJ 47 (folld)
2 *Leggate* v *Brown* [1950] 2 All ER 564 (refd)
3 *Kerridge* v *Rush* [1952] 2 Lloyd's Rep 305 (refd)
4 *Durrant* v *Maclaren* [1956] 2 Lloyd's Rep 70 (refd)

Legislation referred to
Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 88, 1970 Ed) ss 3(1), (2), 9(4)
Traffic (Public Service Vehicles) Rules 1976 r 41
Road Traffic Act 1930 [UK] s 35

M Rajaram for the appellant.
Loke Yoon Kee (Deputy Public Prosecutor) for the Public Prosecutor.

Cur Adv Vult

Wee Chong Jin CJ: The appellant was charged with an offence under s 3(1) of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 88, 1970 Ed).

Section 3(1) reads as follows:

> Subject to the provisions of this Act, it shall not be lawful for any person to use or to cause or permit any other person to use a motor vehicle unless there is in force in relation to the use of the motor vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third-party risk as complies with the requirements of this Act.

The appellant claimed trial to the charge. He was convicted and sentenced to a fine of $300 and disqualified from driving class 4 motor vehicles for a period of 12 months.

The facts are not in dispute. On 26 July 1985, the appellant permitted one Quek Wee Beng to use a school

bus to ferry adult passengers. At that time, he did not possess an Adult Workers Contract Permit ('AWCP') and was therefore not licensed to carry adult passengers under r 41 of the Traffic (Public Service Vehicles) Rules 1976.

The sole issue in this appeal is whether there was a policy of insurance in force in relation to the use of the motor vehicle at the material time.

As I have said in *PP* v *Albert See*,[1] the answer must depend on a consideration of the material provisions of the insurance policy in question. In this case, the uses to which the vehicle can be put are defined in the 'limitations as to use' clause and Memo B in the policy. The relevant clauses provide as follows:

> *Limitations as to use*
>
> Use only for the carriage of passengers or goods in connection with the policy holder's business. The policy does not cover –
>
> (1) Use of racing, pacemaking, reliability trial or speed-testing.
>
> (2) Use whilst drawing a trailer except the towing (other than for reward) of any one disabled mechanically propelled vehicle.
>
> *Memo B*
>
> It is hereby declared and agreed that the 'limitations as to use' under this policy is extended as follows:
>
> (a) Use for the carriage of adult passengers under an Adult Workers Contract Permit.
>
> (b) Use for the carriage of not more than 40 passengers for hire or reward.

On a literal reading of the 'limitations as to use' clause, the insurance coverage encompasses the carriage of passengers or goods in connection with the policy holder's business. Prima facie, this includes the carriage of all categories of passengers in connection with the policyholder's business which is described as that of a 'bus owner/driver'. However, this clause must be read with Memo B in determining the exact scope of the policy. The preamble to Memo B provides for the extension of the 'limitations as to use' clause to include the carriage of adult passengers under an AWC permit. The use of the word 'extend' in Memo B presupposes that the matters therein set out were not included in the 'limitations as to use' clause. Any other construction would render Memo B superfluous. I thus find myself in agreement with the magistrate that the policy does not, on its true construction, cover the use of the vehicle at the time of the offence.

Whilst this is sufficient to dispose of the appeal at this stage, it would be useful for me to make some observations on the submissions advanced by counsel for the appellant. The appellant contends that the failure to obtain the AWC permit amounts only to a breach of the policy which renders it voidable at the option of the insurers. In my view, this argument overlooks a fundamental distinction which must be drawn in all such cases falling under s 3(1). First, the trial judge must determine whether, as a matter of construction, the policy covers the use of the vehicle at the material time.

This is perhaps best illustrated by the cases of *Leggate* v *Brown*[2] and *Kerridge* v *Rush*.[3] In *Leggate* v *Brown*,[2] the defendant was convicted under s 35 of the Road Traffic Act 1930 for driving a vehicle without a policy in force against third-party risks in respect of that vehicle. The policy contained an endorsement which enabled the tractor to be used with two trailers. However, the tractor was drawing two laden trailers which was an offence under the Road Traffic Act 1930. In quashing the conviction, Lord Goddard CJ said:

> When this vehicle was being driven on the road and was stopped by the police it was drawing two trailers and they were both laden. The policy says nothing about laden trailers. It simply allows the vehicle to be used with two trailers, and, whatever else this policy does, it certainly does not insure the appellant against the consequences of using the tractor in that manner. If the policy had insured him against using the tractor illegally, to that extent it would have been ineffective, but I am far from saying that such a term would have vitiated the whole policy.

This case can be usefully contrasted with that of *Kerridge* v *Rush*.[3] In that case, the defendant also used a tractor to draw two laden trailers. However, the language of the defendant's policy was couched in different terms. The endorsement provided that 'it shall not be deemed to grant indemnity in connection with any vehicle described in the schedule of this policy *and/or any trailer whilst such vehicle is drawing a greater number of trailers in all than is permitted by law*' (emphasis added). The carrying of two laden trailers was an offence under the Road Traffic Act. In upholding the conviction, Lord Goddard CJ said:

> The vehicle in this case was drawing a greater number of trailers than was permitted by law, and therefore the underwriters have said, it seems to me, in language which cannot bear more than one meaning, that if you draw a greater number of trailers than allowed by law, they do not indemnify and there is no policy in existence.

Secondly, if upon its true construction, the policy covers the use of the vehicle in question, the policy may yet be voidable at the option of the insurers, eg on the ground of misrepresentation. However, such a policy will remain a policy in force unless the policy had in fact been avoided in accordance with s 9(4) of the Motor Vehicles (Third-Party Risks and Compensation) Act: see, for example *Durrant* v *Maclaren*.[4]

In the circumstances, I am of the opinion that the magistrate was right in convicting the accused. In respect of the appeal against sentence, s 3(2) of the Act provides for a fine not exceeding $1,000 or imprisonment for a term not exceeding three months or to both. Having regard to all the circumstances of the case, I do not think

that the sentence imposed by the learned magistrate of a fine of $300 is manifestly excessive. As regards the order of disqualification, s 3(2) of the Act provides that a person convicted under s 3(1) shall be disqualified from holding or obtaining a driving licence for a period of 12 months unless there are special reasons for the court to order otherwise. I agree with the learned magistrate that there are no special reasons on the facts of this case not to impose an order that the appellant be disqualified from holding or obtaining a driving licence in respect of class 4 vehicles for a period of 12 months.

Order accordingly.

Solicitors: *Raja & Partners.*

Reported by *Ng Sheau Jiuan*

Nai Seng Hiang & Ors v The Trustees of the Presbyterian Church in Singapore Registered & Ors

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 1069 OF 1987
LAI KEW CHAI J
30 AUGUST 1988

Trusts – Declaration of trust for the purpose of 'Christian works evangelistic social or otherwise' – Whether purposes are exclusively charitable – Cy-pres scheme

Words and Phrases – 'Social or otherwise'

By a declaration of trust, the trustees therein named declared in cl (2) that they held a piece of land upon the following trust: 'upon trust to permit or allow the said land and premises to be used for the purpose of Christian works evangelistic social or otherwise at the discretion of the Chinese Presbyterian Church of Malaya amongst and for the benefit of the children of all Hakka speaking Chinese in Singapore and for this purpose to take all such proceedings as may be necessary to recover possession of the said land and premises.'

The plaintiffs, as the present trustees, sought the court's directions on the following questions: (a) if the trust contained in cl (2) is a valid, charitable trust; or (b) if the trust has failed, whether the land and premises are to be applied cy-pres, the donor AC Jap (deceased) having evinced a general charitable intention; or (c) if the trust is void, whether the land and premises are to be held by the plaintiffs on resulting trust for the residuary estate of the donor.

Held, ordering a cy-pres scheme to fulfil the exclusive charitable intention evinced by the trust:

(1) Having regard to all the factual matrix and the provisions of the declaration of trust, the court is of the opinion that the donor had clearly and unequivocably evinced a general charitable intention that Christian works and evangelistic pursuits were the exclusive purposes with the other purposes 'social or otherwise' as mere adjectives describing one aspect of them because these words were not free standing as to import separate objects.

(2) The property be transferred to the first defendants to hold the property upon trust and subject to the provisions of the trust deed.

Legislation referred to
Government Proceedings Act (Cap 121, 1985 Ed) s 9(1)

Clive Heng for the plaintiffs.
Muthu Arusu for the first defendants.
Joyce Huen (Miss) (State Counsel) for the third defendant.

Cur Adv Vult

Lai Kew Chai J: By this originating summons the plaintiffs as the present trustees of the land and premises known as no 110, Race Course Road, Singapore ('the property') seek the court's determination concerning the trust declared in a declaration of trust dated 18 May 1948 of the donor, AC Jap, deceased, and for directions on the following questions:

(i) if the trust contained in cl 2 is a valid, charitable trust; or

(ii) if the trust has failed, whether the land and premises are to be applied cy-pres, the donor AC Jap (deceased) having evinced a general charitable intention; or

(iii) if the trust is void, whether the land and premises are to be held by the plaintiffs on resulting trust for the residuary estate of the donor.

The first defendants are joined as the party to whom the property should be conveyed if the trust in cl 2 is found to be a valid, charitable trust. They are a body corporate registered under s 68(3) of the Trustees Act. They are regulated by a trust deed. The second defendant is a widow and sole residuary beneficiary of the estate of AC Jap, deceased, and she did not appear though she was duly served with the papers as she had indicated that she would leave the matter to this court. The Attorney General has been joined by virtue of s 9(1) of the Government Proceedings Act (Cap 121, 1985 Ed) and has consented to being so joined.

The material facts were all not in dispute. By a declaration of trust dated 18 May 1948 the trustees there named declared that the property was vested in them, that the purchase price therefor of $20,000 was provided by the said AC Jap and that they held the same upon the following trusts that is to say:

(1) Upon trust to name the said land and premises as 'AC Jap Hall' and to place a memorial brass plate inside the building bearing the following inscription – 'The purchase money for this building was donated by Dr AC Jap in loving memory of his beloved wife Tan Guat Tiong and his beloved daughter Jap Kim Lian.'